OBSERVATIONS

ON

SENATOR DOUGLAS'S

VIEWS OF

POPULAR SOVEREIGNTY,

AS EXPRESSED IN

HARPERS' MAGAZINE, FOR SEPTEMBER, 1859.

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PREFATORY NOTE.

The writer of these "Observations" waited a few days after the appearance of Harpers' Magazine for September, in the confident expectation that somebody, with more leisure and greater ability, would fully express the almost universal dissent of the public mind from the views contained in Mr. Douglas's article. He yielded to "the request of friends" only when he saw what he supposed to be a general wish for a discussion more extended than could be given of such a subject in newspaper paragraphs. Why not put the writer's name to it? Because the truth or falsehood of what is written does not depend on the name or character of him who wrote it. *Ito libellum!* Let it go forth, and find what entertainment it can.

WASHINGTON, *Sept.* 7, 1859.

OBSERVATIONS.

Every one knows that Mr. Douglas, the Senator from Illinois, has written and printed an elaborate essay, comprising thirty-eight columns of Harpers' Magazine, in which he has undertaken to point out the "dividing line between federal and local authority." Very many persons have glanced over its paragraphs to catch the leading ideas without loss of time, and some few have probably read it with care.

Those who dissent from the doctrines of this paper owe to its author, if not to his arguments, a most respectful answer. Mr. Douglas is not the man to be treated with a disdainful silence. His ability is a fact unquestioned; his public career, in the face of many disadvantages, has been uncommonly successful; and he has been for many years a working, struggling candidate for the Presidency. He is, moreover, the Corypheus of his political sect—the founder of a new school—and his disciples naturally believe in the infallible verity of his words as a part of their faith.

The style of the article is, in some respects, highly commendable. It is entirely free from the vulgar clap-trap of the stump, and has no vain adornment of classical scholarship. But it shows no sign of the eloquent Senator; it is even without the logic of the great debater. Many portions of it are very obscure. It seems to be an unsuccessful effort at legal precision; like the writing of a judge, who is trying in vain to give good reasons for a wrong decision on a question of law which he has not quite mastered.

With the help of Messrs. Seward and Lincoln, he has defined accurately enough the platform of the so-called Republican party; and he does not attempt to conceal his conviction that their doctrines are, in the last degree, dangerous. They are, most assuredly, full of evil and saturated with mischief. The "irrepressible conflict" which they speak of with so much pleasure between the "opposing and enduring forces" of the Northern and Southern States, will be fatal, not merely to the peace of the country, but to the existence of the Government itself. Mr. Douglas knows this, and he knows, also, that the Democratic party is the only power which is, or can be, organized to resist the Republican forces or oppose their hostile march upon the capital. He who divides and weakens the friends of the country at such a crisis in her fortunes, assumes a very grave responsibility.

Mr. Douglas separates the Democratic party into three classes, and describes them as follows:

"*First.* Those who believe that the Constitution of the United States neither establishes nor prohibits slavery in the States or Territories beyond the power of the people legally to control it, but 'leaves the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States.'

"*Second.* Those who believe that the Constitution establishes slavery in the Territories, and withholds from Congress and the Territorial Legislature the power to control it, and who insist that, in the event the Territorial Legislature fails to enact the requisite laws for its protection, it becomes the imperative duty of Congress to interpose its authority and furnish such protection.

Third. Those who, while professing to believe that the Constitution establishes slavery in the Territories beyond the power of Congress or the Territorial Legislature to control it, at the same time protest against the duty of Congress to interfere for its protection; but insist that it is the duty of the judiciary to protect and maintain slavery in the Territories without any law upon the subject."

We give Mr. Douglas the full benefit of his own statement. This is his mode of expressing those differences, which, he says, disturb the harmony, and threaten the integrity, of the American Democracy. These passages should, therefore, be most carefully considered.

The first class is the one to which he himself belongs, and to both the others he is equally opposed. He has no right to come between the second and third class. If the difference which he speaks of does exist among his opponents, it is their business, not his, to settle it or fight it out. We shall therefore confine ourselves to the dispute between Mr. Douglas and his followers on the one hand, and the rest of the Democratic party on the other, presuming that he will be willing to observe the principle of non-intervention in all matters with which he has no concern.

We will invert the order in which he has discussed the subject, and endeavor to show—

1. That he has not correctly stated the doctrine held by his opponents; and,

2. That his own opinions, as given by himself, are altogether unsound.

I. He says that a certain portion of the Democratic party believe, or profess to believe, that *the Constitution establishes slavery* in the Territories, and insist that it is the duty of the judiciary to maintain it there *without any law* on the subject. We do not charge him with any intention to be unfair: but we assert, that he has in fact done wrong to, probably, nineteen-twentieths of the party, by attempting to put them on grounds which they never chose for themselves.

The Constitution certainly does not *establish* slavery in the Territories, nor anywhere else. Nobody in this country ever thought or said so. But the Constitution regards as sacred and inviolable all the rights which a citizen may legally acquire in a State. If a man acquires property of any kind in a State, and goes with it into a Territory, he is not for that reason to be stripped of it. Our simple and plain proposition is, that the legal owner of a slave or other chattel may go with it into a Federal Territory without forfeiting his title.

Who denies the truth of this, and upon what ground can it be controverted? The reasons which support it are very obvious and very conclusive. As a jurist and a statesman, Mr. Douglas ought to be familiar with them, and there was a time when he was supposed to understand them very well. We will briefly give him a few of them.

1. It is an axiomatic principle of public law, that a right of

property, a private relation, condition or *status*, lawfully existing in one State or country, is not changed by the mere removal of the parties to another country, unless the law of that other country be in direct conflict with it. For instance: A marriage legally solemnized in France is binding in America; children born in Germany are legitimate here if they are legitimate there; and a merchant who buys goods in New York according to the laws of that State may carry them to Illinois and hold them there under his contract. It is precisely so with the *status* of a negro carried from one part of the United States to another;—the question of his freedom or servitude depends on the law of the place where he came from, and depends on that alone, if there be no conflicting law at the place to which he goes or is taken. The Federal Constitution therefore recognizes slavery as a legal condition wherever the local governments have chosen to let it stand unabolished, and regards it as illegal wherever the laws of the place have forbidden it. A slave being property in Virginia, remains property; and his master has all the rights of a Virginia master wherever he may go, so that he go not to any place where the local law comes in conflict with his right. It will not be pretended that the Constitution itself furnishes to the Territories a conflicting law. It contains no provision that can be tortured into any semblance of a prohibition.

2. The dispute on the question whether slavery or freedom is local or general, is a mere war of words. The black race in this country is neither bond nor free by virtue of any general law. That portion of it which is free is free by virtue of some local regulation, and the slave owes service for a similar reason. The Constitution and laws of the United States simply declare that everything done in the premises by the State governments is right, and they shall be protected in carrying it out. But free negroes and slaves may both find themselves outside of any State jurisdiction, and in a Territory where no regulation has yet been made on the subject. There the Constitution is equally impartial. It neither frees the slave nor enslaves the freeman. It requires both to remain in *statu quo* until the *status* already impressed upon them by the law of their previous domicil shall be changed by some competent local authority. What is competent local authority in a Territory will be elsewhere considered.

3. The Federal Constitution carefully guards the rights of private property against the Federal Government itself, by declaring that it shall not be taken for public use without compensation, nor without due process of law. Slaves are private property, and every man who has taken an oath of fidelity to the Constitution is religiously, morally, and politically bound to regard them as such. Does anybody suppose that a Constitution which acknowledges the sacredness of private property so fully would wantonly destroy that right, not by any words that are found in it, but by mere implication from its general principles? It might as well be asserted that the general principles of the Constitution gave Lane and Montgomery a license to steal horses in the valley of the Osage.

4. The Supreme Court of the United States has decided the question. After solemn argument and careful consideration, that august tribunal has announced its opinion to be that a slaveholder, by going into a Federal Territory, does not lose the title he had to his negro in the State from which he came. In former times, a question of constitutional law once decided by the Supreme Court was regarded as settled by all, except that little band of ribald infidels, who meet periodically at Boston to blaspheme the religion, and plot rebellion against the laws, of the country. The leaders of the so-called Republican party have lately been treading close on the heels of their abolition brethren; but it is devoutly to be hoped that Mr. Douglas has no intention to follow their example. In case he is elected President, he must see the laws faithfully executed. Does he think he can keep that oath by fighting the judiciary?

5. The legislative history of the country shows that all the great statesmen of former times entertained the same opinion, and held it so firmly that they did not even think of any other. It was universally taken for granted that a slave remained a slave, and a freeman a freeman, in the new Territories, until a change was made in their condition by some positive enactment. Nobody believed that a slave might not have been taken to and kept in the Northwest Territory if the ordinance of 1787 or some other regulation had not been made to prohibit it. The Missouri restriction of 1820 was imposed solely because it was understood (probably by every member of that Congress) that, in the absence of a restriction, slave property would be as lawful in the eye of the Constitution above 36° 30′, as below; and all agreed, that the mere absence of a restriction did, in fact, make it lawful below the compromise line.

6. It is right to learn wisdom from our enemies. The Republicans do not point to any express provision of the Constitution, nor to any general principle embraced in it, nor to any established rule of law, which sustains their views. The ablest men among them are driven by stress of necessity to hunt for arguments in a code unrevealed, unwritten, and undefined, which they put above the Constitution or the Bible, and call it "higher law." The ultra abolitionists of New England do not deny that the Constitution is rightly interpreted by the Democrats, as not interfering against slavery in the Territories; but they disdain to obey what they pronounce to be "an agreement with death and a covenant with hell."

7. What did Mr. Douglas mean when he proposed and voted for the Kansas-Nebraska bill repealing the Missouri restriction? Did he intend to tell southern men that notwithstanding the repeal of the prohibition, they were excluded from those Territories as much as ever? Or did he not regard the right of a master to his slave perfectly good whenever he got rid of the prohibition? Did he, or anybody else at that time, dream that it was necessary to make a positive law in favor of the slaveholder before he could go there with safety? To ask these questions is to answer them? The Kansas-Nebraska bill was not meant as a delusion or a snare. It

was well understood that the repeal alone of the restriction against slavery would throw the country open to everything which the Constitution recognized as property.

We have thus given what we believe to be the opinions held by the great body of the Democratic party: namely, that the Federal Constitution does not establish slavery anywhere in the Union; that it permits a black man to be either held in servitude or made free as the local law shall decide; and that in a Territory where no local law on the subject has been enacted, it keeps both the slave and the free negro in the *status* already impressed upon them, until it shall be changed by competent local authority. We have seen, that this is sustained by the reason of the thing, by a great principle of public law, by the words of the Constitution, by a solemn decision of the Supreme Court, by the whole course of our legislation, by the concession of our political opponents, and, finally, by the most important act in the public life of Mr. Douglas himself.

Mr. Douglas imputes another absurdity to his opponents when he charges them with insisting "that it is the duty of the judiciary to protect and maintain slavery in the Territories *without any law upon the subject.*" The judge who acts without law acts against law; and surely no sentiment so atrocious as this was ever entertained by any portion of the Democratic party. The right of a master to the services of his slave in a Territory is not against law nor without law, but in full accordance with law. If the law be against it we are all against it. Has not the emigrant to Nebraska a legal right to the ox team, which he bought in Ohio, to haul him over the plains? Is not his title as good to it in the Territory, as it was in the State where he got it? And what should be said of a judge who tells him that he is not protected, or that he is maintained, in the possession of his property "without any law upon the subject?"

II. We had a right to expect from Mr. Douglas at least a clear and intelligible definition of his own doctrine. We are disappointed. It is hardly possible to conceive anything more difficult to comprehend. We will transcribe it again, and do what can be done to analyze it.

"Those who believe that the Constitution of the United States neither establishes nor prohibits slavery in the States or Territories beyond the power of the people legally to control it, but 'leaves the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States.'"

The Constitution neither establishes nor prohibits slavery in the States or Territories. If it be meant by this that the Constitution does not, *proprio vigore*, either emancipate any man's slave, or create the condition of slavery, and impose it on free negroes, but leaves the question of every black man's *status*, in the Territories as well as in the States, to be determined by the local law, then we admit it, for it is the very same proposition which we have been trying to prove. But if, on the contrary, it is to be understood as an assertion that

the Constitution does not permit a master to keep his slave, or a free negro to have his liberty, in all parts of the Union where the local law does not interfere to prevent it, then the error is not only a very grave one, but it is also absurd and self-contradictory.

The Constitution neither establishes nor prohibits slavery in the States or Territories beyond the power of the people legally to control it. This is sailing to Point-No-Point again. Of course a subject, which is *legally* controlled, cannot be beyond the power that controls it. But the question is, what constitutes legal control, and when the people of a State or Territory are in a condition to exercise it.

The Constitution of the United States * * * * leaves the people perfectly free, * * * *and subject only to the Constitution of the United States.* This carries us round a full circle, and drops us precisely at the place of beginning. That the Constitution leaves everybody subject to the Constitution, is most true. We are far from denying it. We never heard it doubted, and expect we never will. But the statement of it proves nothing, defines nothing, and explains nothing. It merely darkens the subject, as words without meaning always do.

But notwithstanding all this circuity of expression and consequent opaqueness of meaning in the magazine article of Mr. Douglas, we think we can guess what his opinions are or will be when he comes to reconsider the subject. He will admit (at least he will not undertake to deny) that the *status* of a negro, whether of servitude or freedom, accompanies him wherever he goes, and adheres to him in every part of the Union until he meets some local law which changes it.

It will also be agreed that the people of a State, through their Legislature, and the people of a Territory, in the constitution which they may frame preparatory to their admission as a State, can regulate and control the condition of the subject black race within their respective jurisdictions, so as to make them bond or free.

But here we come to the point at which opinions diverge. Some insist that no citizen can be deprived of his property in slaves, or in anything else, *except* by the provision of a State constitution or by the act of a State Legislature; while others contend that an unlimited control over private rights may be exercised by a Territorial Legislature as soon as the earliest settlements are made.

So strong are the sentiments of Mr. Douglas in favor of the latter doctrine, that if it be not established he threatens us with Mr. Seward's "irrepressible conflict," which shall end only with the universal abolition or the universal dominion of slavery. On the other hand, the President, the Judges of the Supreme Court, nearly all the Democratic members of Congress, the whole of the party South, and a very large majority North, are penetrated with a conviction, that no such power is vested in a Territorial Legislature, and that those who desire to confiscate private property of any kind must wait until they get a constitutional convention

or the machinery of a State government into their hands. We venture to give the following reasons for believing that Mr. Douglas is in error :

The Supreme Court has decided that a Territorial Legislature has not the power which he claims for it. That alone ought to be sufficient. There can be no law, order, or security for any man's rights, unless the judicial authority of the country be upheld. Mr. Douglas may do what he pleases with political conventions and party platforms, but we trust he will give to the Supreme Court at least that decent respect, which none but the most ultra Republicans have yet withheld.

The right of property is sacred, and the first object of all human government is to make it secure. Life is always unsafe where property is not fully protected. This is the experience of every people on earth, ancient and modern. To secure private property was a principal object of *Magna Charta*. Charles I. afterwards attempted to violate it, but the people rose upon him, dragged him to the block, and severed his head from his body. At a still later period another monarch for a kindred offence was driven out of the country, and died a fugitive and an outcast. Our own Revolution was provoked by that slight invasion upon the right of property which consisted in the exaction of a trifling tax. There is no government in the world, however absolute, which would not be disgraced and endangered by wantonly sacrificing private property even to a small extent. For centuries past such outrages have ceased to be committed in times of peace among civilized nations.

Slaves are regarded as property in the Southern States. The people of that section buy and sell, and carry on all their business, provide for their families, and make their wills and divide their inheritances on that assumption. It is manifest to all who know them, that no doubts ever cross their minds about the rightfulness of holding such property. They believe they have a direct warrant for it, not only in the examples of the best men that ever lived, but in the precepts of Divine Revelation itself; and they are thoroughly satisfied that the relation of master and slave is the only one which can possibly exist there between the white and the black race without ruining both. The people of the North may differ from their fellow-citizens of the South on the whole subject, but knowing, as we all do, that these sentiments are sincerely and honestly entertained, we cannot wonder that they feel the most unspeakable indignation when any attempt is made to interfere with their rights. This sentiment results naturally and necessarily from their education and habits of thinking. They cannot help it, any more than an honest man in the North can avoid abhorring a thief or housebreaker.

The jurists, legislators, and people of the Northern States, have always sacredly respected the right of property in slaves held by their own citizens within their own jurisdiction. It is a remarkable fact, very well worth noticing, that no Northern State ever passed any law to take a negro from his master. All laws for the

abolition of slavery have operated only on the unborn descendants of the negro race, and the vested rights of masters have not been disturbed in the North more than in the South.

In every nation under heaven, civilized, semi-barbarous, or savage, where slavery has existed in any form at all analogous to ours, the rights of the masters to the control of their slaves as property have been respected; and on no occasion has any government struck at those rights, except as it would strike at other property. Even the British Parliament, when it emancipated the West India slaves, though it was legislating for a people three thousand miles away, and not represented, never denied either the legal or the natural right of the slave owner. Slaves were admitted to be property, and the Government acknowledged it by paying their masters one hundred millions of dollars for the privilege of setting them free.

Here, then, is a species of property which is of transcendent importance to the material interests of the South—which the people of that region think it right and meritorious in the eyes of God and good men to hold—which is sanctioned by the general sense of all mankind among whom it has existed—which was legal only a short time ago in all the States of the Union, and was then treated as sacred by every one of them—which is guaranteed to the owner as much as any other property is guaranteed by the Constitution;—and Mr. Douglas thinks that a Territorial Legislature is competent to take it away. We say, No; the supreme legislative power of a sovereign State alone can deprive a man of his property.

This proposition is so plain, so well established, and so universally acknowledged, that any argument in its favor would be a mere waste of words. Mr. Douglas does not deny it, and it did not require the thousandth part of his sagacity to see that it was undeniable. He claims for the Territorial governments the right of confiscating private property on the ground that *those governments* ARE *sovereign*—have an uncontrollable and independent power over all their internal affairs. That is the point which he thinks is to split the Democracy and impale the nation. But it is so entirely erroneous, that it must vanish into thin air as soon as it comes to be examined.

A Territorial government is merely provisional and temporary. It is created by Congress for the necessary perservation of order and the purposes of police. The powers conferred upon it are expressed in the organic act, which is the charter of its existence, and which may be changed or repealed at the pleasure of Congress. In most of those acts the power has been expressly reserved to Congress of revising the Territorial laws, and the power to repeal them exists without such reservation. This was asserted in the case of Kansas by the most distinguished Senators in the Congress of 1856. The President appoints the Governor, judges, and all other officers whose appointment is not otherwise provided for, directly or indirectly, by Congress. Even the expenses of the Territorial government are paid out of the Federal treasury. The truth

is, they have no attribute of sovereignty about them. The essence of sovereignty consists in having no superior. But a Territorial government has a superior in the United States Government, upon whose pleasure it is dependent for its very existence—in whom it lives, and moves, and has its being—who has made, and can unmake it with a breath.

Where does this sovereign authority to deprive men of their property come from? This transcendent power, which even despots are cautious about using, and which a constitutional monarch never exercises—how does it get into a Territorial Legislature? Surely it does not drop from the clouds: it will not be contended, that it accompanies the settlers, or exists in the Territory before its organization. Indeed it is not to the people, but to the government of a Territory, that Mr. Douglas says it belongs. Then Congress must give the power at the same time that it gives the Territorial government. But not a word of the kind is to be found in any organic act that ever was framed. It is thus that Mr. Douglas's argument runs itself out into nothing.

But if Congress *would* pass a statute expressly to give this sort of power to the Territorial governments, they still would not have it; for the Federal Government itself does not possess any control over men's property in the Territories. That such power does not exist in the Federal Government needs no proof: Mr. Douglas admits it fully and freely. It is, besides, established by the solemn decision of Congress, by the assent of the Executive, and by the direct ratification of the people acting in their primary capacity at the polls. In addition to all this, the Supreme Court have deliberately adjudged it to be an unalterable and undeniable rule of constitutional law.

This acknowledgment that Congress has no power, authority, or jurisdiction over the subject, literally *obliges* Mr. Douglas to give up his doctrine, or else to maintain it by asserting that a power which the Federal Government *does not possess* may be *given by Congress to the Territorial government.* The right to abolish African slavery in a Territory is not granted by the Constitution to Congress; it is withheld, and therefore the same as if expressly prohibited. Yet Mr. Douglas declares that Congress may give it to the Territories. Nay; he goes further, and says that the *want* of the power in Congress is the *very reason* why it can delegate it—the general rule, in his opinion, being that Congress cannot delegate the powers it possesses, but may delegate such, "and only such, as Congress cannot exercise under the Constitution!" By turning to pages 520 and 521, the reader will see that this astounding proposition is actually made, not in jest or irony, but solemnly, seriously, and, no doubt, in perfect good faith. On this principle, as Congress cannot exercise the power to make an *ex post facto* law, or a law impairing the obligation of contracts, *therefore* it may authorize such laws to be made by the town councils of Washington city, or the levy court of the District. If Congress passes an act to hang a man without trial, it is void,

and the judges will not allow it to be executed; but the power to do this prohibited thing can be constitutionally given by Congres to a Territorial Legislature!

We admit that there are certain powers bestowed upon the General Government which are in their nature judicial or executive. With them Congress can do nothing, except to see that they are executed by the proper kind of officers. It is also true that Congress has certain legislative powers which cannot be delegated. But Mr. Douglas should have known that he was not talking about powers which belonged to either of these classes, but about a legislative jurisdiction totally forbidden to the Federal Government, and incapable of being delegated, for the simple reason that it does not constitutionally exist.

Will anybody say that such a power ought, as a matter of policy, or for reasons of public safety, to be held by the provisional governments of the Territories? Undoubtedly no true patriot, nor no friend of justice and order, can deliberately reflect on the probable consequences without deprecating them.

This power over property is the one which in all governments has been most carefully guarded, because the temptation to abuse it is always greater than any other. It is there that the subjects of a limited monarchy watch their king with the greatest jealousy. No republic has ever failed to impose strict limitations upon it. All free people know, that if they would remain free, they must compel the government to keep its hands off their private property; and this can be done only by tying them up with careful restrictions. Accordingly our Federal Constitution declares that "no person shall be deprived of his property except by due process of law," and that "private property shall not be taken for public use without just compensation." It is universally agreed that this applies only to the exercise of the power by the Government of the United States. We are also protected against the State governments by a similar provision in the State constitutions. Legislative robbery is therefore a crime which cannot be committed either by Congress or by any State Legislature, unless it be done in flat rebellion to the fundamental law of the land. But if the Territorial governments have this power, then they have it without any limitation whatsoever, and in all the fulness of absolute despotism. They are omnipotent in regard to all their internal affairs, for they are *sovereigns, without a constitution to hold them in check.* And this omnipotent sovereignty is to be wielded by a few men suddenly drawn together from all parts of America and Europe, unacquainted with one another, and ignorant of their relative rights. But if Mr. Douglas is right, those governments have all the absolute power of the Russian Autocrat. They may take every kind of property in mere caprice, or for any purpose of lucre or malice, without process of law, and without providing for compensation. The Legislature of Kansas, sitting at Lecompton or Lawrence, may order the miners to give up every ounce of gold that has been dug

at Pike's Peak. If the authorities of Utah should license a band of marauders to despoil the emigrants crossing the Territory, their sovereign right to do so cannot be questioned. A new Territory may be organized, which Southern men think should be devoted to the culture of cotton, while the people of the North are equally certain that grazing alone is the proper business to be carried on there. If one party, by accident, by force, or by fraud, has a majority in the Legislature, the negroes are taken from the planters; and if the other set gains a political victory, it is followed by a statute to plunder the graziers of their cattle. Such things cannot be done by the Federal Government, nor by the governments of the States; but, if Mr. Douglas is not mistaken, they can be done by the Territorial governments. Is it not every way better to wait until the new inhabitants know themselves and one another; until the policy of the Territory is settled by some experience; and, above all, until the great powers of a sovereign State are regularly conferred upon them and properly limited, so as to prevent the gross abuses which always accompany unrestricted power in human hands?

There is another consideration, which Mr. Douglas should have been the last man to overlook. The present Administration of the Federal Government, and the whole Democratic party throughout the country, including Mr. Douglas, thought that, in the case of Kansas, the question of retaining or abolishing slavery should not be determined by any representative body without giving to the whole mass of the people an opportunity of voting on it. Mr. Douglas carried it further, and warmly opposed the constitution, denying even its validity, because other and undisputed parts of it had not also been submitted to a popular vote. Now he is willing that the whole slavery dispute in any Territory, and all questions that can arise concerning the rights of the people to that or other property, shall be decided at once by a Territorial Legislature, without any submission at all. Popular sovereignty in the last Congress meant the freedom of the people from all the restraints of law and order: now it means a government which shall rule them with a rod of iron. It swings like a pendulum from one side clear over to the other.

Mr. Douglas's opinions on this subject of sovereign Territorial governments are very singular; but the reasons he has produced to support them are infinitely more curious still. For instance, he shows that Jefferson once introduced into the old Congress of the Confederation a *plan* for the government of the Territories, calling them by the name of "New States," but not making them anything like sovereign or independent States; and though this was a mere experimental *projet*, which was rejected by Congress, and never afterwards referred to by Jefferson himself, yet Mr. Douglas argues upon it as if it had somehow become a part of our fundamental law.

Again: He says that the States gave to the Federal Government the same powers which as colonies they had been willing to concede to the British Government, and kept those which as colonies they

had claimed for themselves. If he will read a common-school history of the Revolution, and then look at Art. I, sec. 8, of the Constitution, he will find the two following facts fully established: 1. That the Federal Government has "power to lay and collect taxes, duties, imposts, and excises;" and, 2. That the colonies, before the Revolution, utterly refused to be taxed by Great Britain; and so far from conceding the power, fought against it for seven long years.

There is another thing in the article which, if it had not come from a distinguished Senator, and a very upright gentleman, would have been open to some imputation of unfairness. He quotes the President's message, and begins in the middle of a sentence. He professes to give the very words, and makes Mr. Buchanan say: "That slavery exists in Kansas by virtue of the Constitution of the United States." What Mr. Buchanan did say was a very different thing. It was this: "It has been solemnly adjudged by the highest judicial tribunal known to our laws, that slavery exists in Kansas by virtue of the Constitution of the United States." Everybody knows that by treating the Bible in that way, you can prove the non-existence of God.

The *argumentum ad hominem* is not fair, and we do not mean to use it. Mr. Douglas has a right to change his opinions whenever he pleases. But we quote him as we would any other authority equally high in favor of truth. We can prove by himself that every proposition he lays down in Harpers' Magazine is founded in error. Never before has any public man in America so completely revolutionized his political opinions in the course of eighteen months. We do not deny that the change is heartfelt and conscientious. We only insist that he formerly stated his propositions much more clearly, and sustained them with far greater ability and better reasons, than he does now.

When he took a tour to the South, at the beginning of last winter, he made a speech at New Orleans, in which he announced to the people there that he and his friends in Illinois *accepted the Dred Scott decision*, regarded *slaves* as *property*, and fully admitted the right of a Southern man to go into any *Federal territory* with his slave, and to hold him there *as other property is held.*

In 1849 he voted in the Senate for what was called Walker's amendment, by which it was proposed to put all the internal affairs of California and New Mexico under the domination of the *President*, giving him almost unlimited power, *legislative*, *judicial*, *and executive*, over the *internal affairs* of those Territories. (See 20th Cong., p. .) Undoubtedly this was a strange way of treating sovereignties. If Mr. Douglas is right now, he was guilty then of most atrocious usurpation.

Utah is as much a sovereign State as any other Territory, and as perfectly entitled to enjoy the right of self-government. On the 12th of June, 1857, Mr. Douglas made a speech about Utah, at Springfield, Illinois, in which he expressed his opinion strongly in

favor of *the absolute and unconditional repeal* of the organic act, *blotting the Territorial government out of existence*, and putting the people under the sole and exclusive jurisdiction of the United States, *like a fort, arsenal, dock-yard, or magazine.* He does not seem to have had the least idea then that he was proposing to extinguish a sovereignty, or to trample upon the sacred rights of an independent people.

The report which he made to the Senate, in 1856, on the Topeka constitution, enunciates a very different doctrine from that of the magazine article. It is true that the language is a little cloudy, but no one can understand the following sentences to signify that the Territorial governments have sovereign power to take away the property of the inhabitants:

"The sovereignty of a Territory remains in *abeyance*, *suspended* in the United States, *in trust for the people until they shall be admitted into the Union as a State. In the mean time* they are admitted to enjoy and exercise all the rights and privileges of self-government, *in subordination to the Constitution* of the United States, and IN OBEDIENCE TO THE ORGANIC LAW passed by Congress in pursuance of that instrument. These rights and privileges are *all* derived from the Constitution, *through the act of Congress*, and must be exercised and enjoyed in subjection to all the limitations and restrictions which that Constitution imposes."

The letter he addressed to a Philadelphia meeting, in February, 1858, is more explicit, and, barring some anomalous ideas concerning the *abeyance* of the power and the *suspension* of it *in trust*, it is clear enough:

"Under our Territorial system, it requires sovereign power to ordain and establish constitutions and governments. While a Territory may and should enjoy all the rights of self-government, *in obedience to its organic law*, it is NOT A SOVEREIGN POWER. The *sovereignty* of a Territory *remains in abeyance, suspended* in the United States, *in trust for the people when they become a State*, and *cannot be withdrawn from the hands of the trustee and vested in the people of a Territory without the consent of Congress.*"

The report which he made in the same month, from the Senate Committee on Territories, is equally distinct, and rather more emphatic against his new doctrine:

"This committee in their reports have always held that *a Territory is not a sovereign power;* that the sovereignty of a Territory is in abeyance, suspended in the United States, in trust for the people when they become a State; that the United States, as trustees, cannot be divested of the sovereignty, nor the Territory be invested with the right to assume and exercise it, without the consent of Congress. If the proposition be true that sovereign power alone can *institute governments*, and that the sovereignty of a Territory is in abeyance, suspended in the United States, in trust for the people when they become a State, and that the sovereignty cannot be divested from the hands of the trustee without the assent of Congress, it follows, as an inevitable consequence, that the Kansas Legislature did not and could not confer upon the Lecompton convention the sovereign power of ordaining a constitution for the people of Kansas, in place of the organic act passed by Congress."

The days are past and gone when Mr. Douglas led the fiery assaults of the opposition in the Lecompton controversy. Then it was his object to prove that a Territorial Legislature, so far from being omnipotent, was powerless even to authorize an election of delegates to consider about their own affairs. It was asserted that a convention chosen under a Territorial law could make and ordain no constitution which would be legally binding.

Then a Territorial government was to be despised and spit upon, even when it invited the people to come forward and vote on a question of the most vital importance to their own interests. But now all things have become new. The Lecompton dispute has "gone glimmering down the dream of things that were," and Mr. Douglas produces another issue, brand new from the mint. The old opinions are not worth a rush to his present position: it must be sustained by opposite principles and reasoning totally different. The Legislature of Kansas was not sovereign when it authorized a convention of the people to assemble and decide what sort of a constitution they would have, but when it strikes at their rights of property, it becomes not only a sovereign, but a sovereign without limitation of power. We have no idea that Mr. Douglas is not perfectly sincere, as he was also when he took the other side. The impulses engendered by the heat of controversy have driven him at different times in opposite directions. We do not charge it against him as a crime, but it is true that these views of his, inconsistent as they are with one another, always *happen* to accord with the interests of the opposition, always give to the enemies of the Constitution a certain amount of "aid and comfort," and always add a little to the rancorous and malignant hatred with which the Abolitionists regard the Government of their own country.

Yes; the Lecompton issue which Mr. Douglas made upon the Administration two years ago is done, and the principles on which we were then opposed are abandoned. We are no longer required to fight for the lawfulness of a Territorial election held under Territorial authority. But another issue is thrust upon us, to "disturb the harmony and threaten the integrity" of the party. A few words more, (perhaps of tedious repetition,) by way of showing what that new issue is, or probably will be, and we are done.

We insist that an emigrant going into a Federal Territory, retains his title to the property which he took with him, until there is some prohibition enacted by lawful authority. Mr. Douglas cannot deny this in the face of his New Orleans speech, and the overwhelming reasons which support it.

It is an agreed point among all Democrats that Congress cannot interfere with the rights of property in the Territories.

It is also acknowledged that the people of a new State, either in their constitution or in an act of their Legislature, may make the negroes within it free, or hold them in a state of servitude.

But we believe more. We believe in submitting to the law, as decided by the Supreme Court, which declares that a Territorial Legislature cannot, any more than Congress, interfere with rights of property in a Territory—that the settlers of a Territory are bound to wait until the sovereign power is conferred upon them, with proper limitations, before they attempt to exercise the most dangerous of all its functions. Mr. Douglas denies this, and there is the new issue.

Why should such an issue be made at such a time? What is there now to excuse any friend of peace for attempting to stir up the bitter waters of strife? There is no actual difficulty about this subject in any Territory. There is no question upon it pending before Congress or the country. We are called upon to make a contest, at once unnecessary and hopeless, with the judicial authority of the nation. We object to it. We will not obey Mr. Douglas when he commands us to assault the Supreme Court of the United States. We believe the court to be right, and Mr. Douglas wrong.